



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME, COUNCIL 93/LITCHFIELD: :
TOWN EMPLOYEES :
Petitioner : CASE NO. A-0579
and : DECISION NO. 97-047
TOWN OF LITCHFIELD :
Respondent :
:

APPEARANCES

Representing AFSCME, Council 93/Litchfield Town Employees:

Darren Klein, Esq., Counsel
James C. Anderson, Staff Representative

Representing Town of Litchfield:

Gary W. Wulf, Chief Negotiator

Also appearing:

Cecil Williams, Town of Litchfield
Pat Gibeault, AFSCME
Roger Fitzgerald, AFSCME
Warren Duprat, AFSCME
Cecile Durocher, Town of Litchfield
Roland Bergeron
Lorraine Dogopoulos, AFSCME
Gilles Fauteux, AFSCME
Cami Reister, Nashua Telegraph

BACKGROUND

On September 20, 1996, AFSCME, Council 93 (Union) filed a petition for certification of a bargaining unit of employees of the Town of Litchfield. On October 2, 1996, the Town of Litchfield (Town) filed its answer objecting to the inclusion of certain positions in the bargaining unit and further objecting to the certification stating that there are an insufficient number of Town employees for the establishment of a bargaining unit. A hearing was held before the undersigned hearing officer on October 25, 1996, and continued on December 11, 1996, at which time a further continuance was requested by the Union. The Union's Motion for Continuance was held in abeyance. A motion for leave to amend the original petition was filed by AFSCME Council 93 on December 23, 1996, to which the Town filed its objection on January 7, 1997. The motions to continue and to amend were granted on January 24, 1997, (Decision 97-013). The hearing was concluded and the record was closed on April 4, 1997.

FINDINGS OF FACT

1. The Town of Litchfield employs various personnel in the operation of local government and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. AFSCME, Council 93 has proposed a bargaining unit for employees of the Town of Litchfield which, as amended, is to consist of the following twelve positions: deputy town clerk (1), secretary/clerk to the board of selectmen (1), secretary/book-keeper (1), office clerk (1), fire fighter (2), laborer, highways (1), laborer, incinerator (3), landfill operator/facilities manager (1), assistant landfill operator/facilities manager (1). The original petition included the librarian but the position was stipulated as excluded on the first day of hearing. The following positions are contested by the Town: deputy town clerk/tax collector, secretary/clerk to the board of selectmen, landfill operator/incinerator facilities manager, assistant landfill operator/incinerator facilities manager, laborer for the highway department and one laborer at the incinerator.

3. The position of deputy town clerk/tax collector is filled by appointment under RSA 41:45-c. The person to fill this position is hired by the town clerk/tax collector and continues in that employment at the pleasure of the town clerk/tax collector. The incumbent recalls her approval by the board of selectmen and her swearing in as deputy town clerk/tax collector on March 13, 1993 (Town Exhibit No. 3). The duties of the deputy town clerk/tax collector include no supervision of employees. Routinely, she performs municipal office work similar to the office clerk.
4. The process of revision of job descriptions of municipal employees has been in progress for some years. The job description of the secretary/clerk to the board of selectmen is outdated. This job description does not include mention of taking minutes at executive sessions of the board but this position has performed this task in the stead of the administrative assistant since 1993. The police department is unionized. Thus, its contract is negotiated between the selectmen and the police department bargaining unit. Since 1996, the secretary/clerk to the board of selectmen has done much confidential typing, including typing related to negotiations involving the police union.
5. The position of landfill operator/incinerator facilities manager makes recommendations to the board of selectmen on matters such as raises and promotions. The incumbent, Mr. Duprat, testified that he has never needed to exercise discipline and believes that he has no authority to actually discipline or terminate employees. This position sets schedules and oversees leave time for those who work at the incinerator. He makes recommendations on raises and, this year, Mr. Duprat prepared the department budget. The incumbent disputes the label of department head or manager but documents which pre-exist the certification petition identify the incumbent as such (Town Nos. 8 and 9). The incinerator work schedule for 1997 is signed by Warren Duprat, Incinerator

Manager (Union No. 13). Chairman of the Board of Selectmen, Cecil Williams testified that the incumbent has about the same authority as other department heads. The incinerator operation is not part of another department and the incinerator operator/incinerator facilities manager reports directly to the board of selectmen. There is no job description for incinerator facilities manager. According to Mr. Duprat's testimony on cross examination, the job description for incinerator operator (Union No. 10) does not encompass the duties performed by that position.

6. The assistant incinerator operator/incinerator facilities manager reports to the incinerator operator/facilities manager. Little testimony or documentary evidence was taken which relates to the duties of this position save the outdated job description (Union No. 8). This position does not supervise others.
7. The Town contends that the laborer who works on roads is a casual employee who works only when called. The road agent, Roland Bergeron supported the testimony of Gilles Fauteux, the laborer who has worked for him for a year. Both stated that Mr. Fauteux is scheduled to work three days a week: Monday, Tuesday and Wednesday. The road agent is an elected position. Mr. Bergeron testified that he has authority to hire employees such as part-time laborers, who are paid out of the highway budget. He also has employees who work only when called.
8. The last laborer position, which the Union argues had been inadvertently omitted from the bargaining unit, is an unfilled laborer position at the incinerator. The Town argues that there are five employees at the landfill including the unfilled position for which no interest card was originally submitted.

DECISION AND ORDER

RSA 273-A:8 empowers the Public Employee Labor Relations Board to determine whether a bargaining unit is to be established and, if so, the composition of the proposed bargaining unit. The statute sets the standard under which each proposed unit is to be reviewed and designates reasons for excluding certain positions from a bargaining unit.

The deputy town clerk/tax collector is a statutory appointee who is hired by the town clerk with approval of the selectmen. RSA Chapter 273 acknowledges the right of public employees to organize to bargain and defines "public employee" in RSA 273-A:1 IX. This position is excluded since it does not come within the definition of "public employee" according to RSA 273-A:1 IX (b) which exempts those appointed by the legislative body or chief executive of the "public employer." The deputy town clerk/tax collector is excluded since it is an "appointed" position within the meaning of the statute.

The secretary/clerk to the board of selectmen performs confidential work related to labor relations matters. It is enough that the position takes minutes of non-public sessions of the board of selectmen and has done so for years. This position is excluded because of its confidential relation to management. RSA 273-A:IX (c).

The incinerator operator/incinerator facilities manager is excluded under the provision applying to supervisory employees, RSA 273-A:8 II. This is a department head level position which reports directly to the selectmen. The incumbent attends meetings of the selectmen on occasion to give recommendations for promotions and exercises authority despite the absence of a job description to confirm the same. Though this position works alongside fellow employees, he is a department head and the indicia of supervisory authority are present. They include the assignment of work schedules, recommendations on promotions and discipline, if that were necessary. This position exercises significant discretion in personnel matters in a very informal employment structure. In addition, this position budgets and oversees equipment purchases. The assistant incinerator operator on the other hand is not a supervisory employee as he does not exercise supervision as a regular part of his employment. There

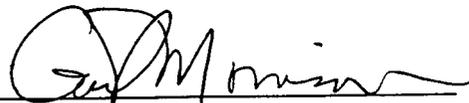
is no basis to exclude the assistant incinerator operator/incinerator facilities manager position.

The part-time laborer in the highway department is not on call. He is assigned regular hours but is given liberty to vary his hours. However, this position works for and serves at the pleasure of the road agent; it is not hired by the selectmen. The position has no expectation of continuing employment should the road agent not be re-elected. Also, this position is employed through a different entity of town government and so does not share common working conditions with Town employees. Absent is a community of interest necessary for bargaining unit members. RSA 273-A:8 I, The part-time laborer who works for the road agent is excluded from bargaining unit membership.

The additional laborer position at the incinerator discussed in testimony is among the original three laborer positions which were not challenged by the Town. Reviewing the total number of positions eligible for bargaining unit membership, it is apparent that no unit may be certified for Town of Litchfield employees. RSA 273-A:8 I bars the establishment of bargaining units of less than ten members. In this case, four of the proposed twelve bargaining unit positions are excluded. An eight member bargaining unit may not be certified.

So ordered.

Signed this 2nd day of MAY, 1997.



GAIL MORRISON
Hearing Officer